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PROGRAM The Rudy Maxa Show STATION WRC Radio

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SUBJECT Government Leaks

RUDY MAXA: We're talking about government leaks. The Reagan Administration is going to try to plug them up now by requiring anybody in the government who deals with classified information to submit to a lie-detector test, if asked.

On the WRC Live Line with us for this half-hour is Mark Lynch. Mark is an attorney with the American Civil Liberties Union. And we were talking just a few seconds ago off the air about a subject I haven't brought up. Also in this proposed rule is the requirement that before a government worker writes about a subject [unintelligible] that he submit it to the government for approval. Mark Lynch is a good person to talk to about that because one of his clients is Frank Snepp, the CIA agent who wrote a book about America's disastrous withdrawal from Vietnam. The CIA went to court, and all the royalties that Frank Snepp now receives go to the government, if my memory serves on that.

Mark, I can guess how the ACLU feels about this, but would you like to put it in a nutshell?

MARK LYNCH: Well, unfortunately, the Supreme Court decision in the Snepp case opened the door to this. And it was only a matter of time before the government took advantage of what the Supreme Court had given them.

But you're quite right. The rule now is going to be that anybody, not just people in the CIA, but anybody in the government who has access to classified information is going to be required to submit any book or article or news column that they may write for the rest of their lives about anything that they've learned during the course of or as a result of their employment so that the government can determine whether there's

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classified information in there.

MAXA: Lest we think that this is some kind of smooth process in which a highly trained panel says yes, yes, yes, and checks these off as a matter of course. Last week on this show we talked with Rowson Lee (?), a CIA veteran of 25 years who had to get a book okayed. And it's something like trying to run a race through a swamp, I gather.

LYNCH: That's right. As a matter of fact, Rowson is another one of my clients, and I represented him in that process. And it took about 18 months for him to get his manuscript through the clearance process because it dealt with some controversial matters and it was critical of the agency.

So this is going to be a very daunting process for prospect for people who are thinking about writing about their government experience. If you think back, it's going to mean that books by people like Dean Acheson and George Kennan and Henry Kissinger all will have -- in the future will all have to be submitted to this process. And it will much delay, and in some cases, in fact, prevent, disclosure of unharmful but very useful information to the public.

MAXA: Good morning, George. You're on WRC with Mark Lynch.

GEORGE: I can only speak for the Defense Department, in a sense.

MAXA: You work at the Defense Department?

GEORGE: I'm employed at the Defense Department.

Whenever you join the Civil Service or the Department of Defense, the military services, you sign a loyalty agreement, I think, already. And you're saying to Uncle Sam that, hey, I'm going to abide by your laws, rules and regulations. And the fact that someone violates those laws or regulations, whether it be for the public good or whatever, is wrong. And there should be, in fact [unintelligible].

LYNCH: Well, you know, the gentleman is absolutely right, that if you go to work for the government you've got to abide by the rules. The question is, are the rules reasonable, and are they reasonably related to what the governments trying to accomplish?

In the case of the pre-publication review requirement, that not only applies to things that you write while you're working for the government, but also things that you write after

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Approved For Release 2007/03/14 : CIA-RDP88-01070R000100630002-4

you leave the government, where the government has much less interest in having people be unofficial spokesman for the government.

With respect to the lie-detector test, it's a very intrusive means of investigation, and it's completely unreliable. There isn't a federal court in the country that will accept lie-detector tests -- a lie-detector test as evidence in a court case. And the reason for that is that the experts -- there is not sufficient agreement among the experts that lie detectors are reliable.

Where lie detectors are useful in the security field is that they scare people. They scare people into not talking to people outside the government. So it's an intrusive technique which is unreliable, which -- its only value, really, is to scare people. And that doesn't seem to be a reasonable way to deal with the federal work force.

MAXA: ...Good morning, Ann.

ANN: I think that government workers should be requested to take the polygraph examination, and any publications should be screened.

MAXA: Ann, don't you think -- isn't the whole bedrock of democracy a free exchange of information, and the government is working for us? Doesn't it bother you that it would have a bit of a chilling effect on a government employee to think that if something in his heart, in his conscience is demanding he speak out, then he could lose his job because he's irritating his boss?

ANN: No, it most certainly does not. I think that the handling of classified materials is a privilege, not a right. And it isn't a matter for a court of law.

And I don't think that the polygraph examination is completely unreliable. I just can't understand why anybody would object to taking one.

MAXA: Mark, have you had some experience with people objecting to taking one?

LYNCH: I wonder if the lady has taken one. Because the people -- I've represented a number of people who have, and it's a very, very unpleasant experience. You know, the interviews can go into all parts of your personal life, and it can be very hard to make distinctions that are necessary in order to register a truthful answer on the polygraph. And as I say...

Approved For Release 2007/03/14 : CIA-RDP88-01070R000100630002-4

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ANN: Well, they don't go into all parts of the person's life. They just ask questions concerning relevant material.

MAXA: But they don't. In order to administer a test, you have to have all kinds of...

ANN: Maybe they don't, to get the person used to the polygraph. But then when they go to polygraph the person, they ask only relevant questions, what they're trying to find out, if you have disclosed information. They don't ask something about his childhood to find out whether he's disclosed any classified information.

LYNCH: No. But in the process of determining whether one has disclosed classified information, the test gets into a wide range of who they associate with, who they talk to, do they have a girlfriend, you know, do they have a boyfriend, and it gets very, very intrusive.

ANN: I think that the President has the right to use any means to protect the nation's classified material. A polygraph examination is just one.

LYNCH: Well, it's simply not right to say he can use any means. I mean you wouldn't agree that he can torture people.

ANN: Well, of course not.

LYNCH: Some means are unreasonable.

ANN: Well, a polygraph examination is not torture and it's not unreasonable.

LYNCH: It's just terribly unreliable.

ANN: It is not terribly unreliable.

MAXA: ...Lie-detector tests are not admissible in federal court as evidence.

ANN: The handling of classified material is a privilege, not a right.

MAXA: I don't think anybody suggests that it is a right.

ANN: It's not a matter for a court of law.

Have you been watching polygraph demonstrations on television?

Approved For Release 2007/03/14 : CIA-RDP88-01070R000100630002-4

Approved For Release 2007/03/14 : CIA-RDP88-01070R000100630002-4

MAXA: I've seen F. Lee Bailey's travesty now and then, if that's what you're referring to.

ANN: Well, I don't think they're completely unreliable.

LYNCH: Mr. Bailey's been much more successful in selling polygraphs on television than he has been to the courts.

ANN: The ACLU is always fighting anything that the government tries to do in the protection of classified material.

MAXA: Well, thanks for calling in.

* * *

MAXA: ...You mentioned something to me during the commercial break about lie detectors, Mark. What was that?

LYNCH: One of the interesting things, Rudy, is that in 17 states it's against the law for an employer to ask an employee to take a polygraph. And the District of Columbia is one of the jurisdictions that has such a rule. That law in the District exempts the Federal Government, the police department, and the fire department. But, in effect, what's happened here is that President Reagan has implemented a policy that would be illegal for Safeway to implement with respect to its employees.

MAXA: Richard, you're on WRC.

RICHARD: I work with classified information for the Defense Department, and have done so for many years. I also have signed a consent that I will submit to a polygraph. And I just want to point out that one of the things on the print form that I did sign indicated that there would be no lifestyle questions asked during the polygraph. They aren't trying to find out if you wear a mask when you go to bed or anything like that.

The other point is that it's classified information that they're interested in. That's the area that they're going to --that the polygraph is all about. It's not about whether or not somebody is corrupt, whether there are mismanagement practices, or somebody's breaking the law. Those items are not classified. And if a government employee sees something like that going on and blows the whistle, they don't have to worry about a polygraph.

MAXA: They can worry about political implications, but not necessarily a polygraph.

RICHARD: Sure. They can worry about the rest of the guys in the office don't like 'em or the boss is disappointed, or

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something else. But there is nothing in the government that says that if you uncover corruption, that you're going to have a polygraph and that's going to be cause for firing.

MAXA: Does that satisfy you, Mark?

LYNCH: Well, I mean, certainly we hope that the polygraphs will be administered in a reasonable and non-intrusive way. And we haven't seen the regulations or the guidelines yet that are going to follow this presidential directive. And certainly there are degrees of abuse.

But the bottom-line objection to the polygraph really, I think, is its unreliability. As I say, it simply has not been accepted as sufficiently reliable to be accepted as evidence in courts. And I think that, in view of that, it's just very difficult for the government to carry the burden of demonstrating that it's a reliable, useful investigative technique.

MAXA: Good morning, Shirley.

SHIRLEY: Mr. Lynch, I don't mean to seem facetious or irresponsible. But considering what happens to people when they're trying to be loyal and they're trying to tell the truth, may I suggest that if we're going to have these polygraph tests, why don't we start with our elected government officials, with our President right on down? Why not have them do the same thing for the American people that they're requesting that the American people do for each Administration? We seem to be taking our lives in our hands each time. And I would like very much to have had this in force during Watergate.

MAXA: Well-known point, Shirley.

SHIRLEY: Thank you very much. I just think that it ought to work both ways.

MAXA: Dan, you're on WRC.

DAN: Mr. Lynch, I wonder if we're going to have questions submitted to the people before they have the detector test.

LYNCH: Well, I think any responsible polygraph operator does that. It's the way the process works. You've got to go over the questions with the person beforehand. I've never heard of a polygraph being -- I suppose it has, but I've never heard of a polygraph being administered without the subject being told of the questions.

MAXA: Ethel, you're on WRC.

Approved For Release 2007/03/14 : CIA-RDP88-01070R000100630002-4

Approved For Release 2007/03/14 : CIA-RDP88-01070R000100630002-4

ETHEL: I'm appalled at your program.

Number one, why don't you get a good, legitimate attorney on to assess this stuff, instead of the CALU [sic]? I could vomit every time I hear the name ACLU. And I think...

MAXA: Jeez, Ethel, do you have a strong feeling about this, or is this just an opinion you came up with this morning?

ETHEL: Yes, I do.

Working for the government is a privilege and not a right. And those who do work for the government should respect the authority of the government. And anybody who leaks -- let's look at Jack Anderson. It's terrible the stuff he comes out with. And how much of it is true? It's maybe some disgruntled little nothing employee who tells one of his henchmen something, and the henchman just then, "This is bible. This is gospel." And it goes all over the country as truth.

MAXA: All right, Ethel, let's not pick a little henchman, let's pick a big guy. What if the President's right-hand man leaks something to the press? Which is done very, very frequently. Should we slap him on the lie-detector test right away?

ETHEL: Well, that's fine with me. I don't care.

MAXA: All right. As long as you're evenhanded on them all.

ETHEL: I wouldn't object to a lie detector test of any kind, because I'm certainly not going to divulge anything that's pertaining to my work in the government.

MAXA: And if you haven't done anything wrong, you have nothing to be ashamed of. Right?

ETHEL: Absolutely.

MAXA: Mark, did you want to comment on that? Or do you want to leave it alone?

MARK: Well, I think I won't comment on the personal attack, but I will comment that -- you know, of course the government has an interest in trying to prevent leaks. But on the other hand, you have to recognize that leaks have become a very important part of the way the government works. And an awful lot of important information has come to public attention through leaks. Bad policies have been avoided. I suppose it's a cliche, but obviously Watergate developed over a series of leaks.

Approved For Release 2007/03/14 : CIA-RDP88-01070R000100630002-4

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There are an awful lot of things that can go wrong in government without the safety valve of leaks. And while I agree that some leaks can be damaging to the national interest, the institution of leaking is a very, very important safety valve in keeping the government from going off the track.

* * *

MAXA: Hi, Bill.

BILL: In listening to the program, the one thing that I find kind of interesting is I think that we, in a sense, have a case of tunnel vision here. And the reason I say that is because one of the things that we're talking about in terms of accepting the polygraph examination is that, number one, we're dealing with classified information, as I understand our discussion this morning.

The only thing is, is that it's only one step in the process. In other words, the fact that you submit to a polygraph exam and that information is used, it's only used as a part of the big picture. The bottom line really comes to judgment. And when you're talking about the validity of the exam, it's a judgment on the part of the gentleman administering the exam. It's also judgment on the part of the people that are considering all of the facts to draw a conclusion as to whether or not you have leaked classified information. It in itself, the test in itself is not definitive in terms of any judgment that may or may not be passed.

And I think that -- you know, I think that when we're talking about something like this -- and I understand the issue is polygraph -- we have to put other things in perspective: that, hey, we're only dealing here with one step in the total process.

MAXA: Okay. Thanks for making your point.

Mark, do you have a thought n that?

LYNCH: I think he's right, and I hope he's -- I hope that's the way it will be carried out, because certainly -- in fact, the regulations themselves indicate that the results of the polygraph should not be viewed to the exclusion of other evidence, which, in a sense, is an admission of their unreliability.

MAXA: Jim, you're on WRC.

JIM: I haven't had an experience with a polygraph as far as government goes, I was applying for a job as a paramedic

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Approved For Release 2007/03/14 : CIA-RDP88-01070R000100630002-4

in a city in Virginia. And the woman who spoke earlier sort of stirred me up when I heard it, because she had a rather idealistic view of polygraphs.

I had to take a test to get this job. And when I went in there, I was subjected to very strenuous examination. I'm 19 years old and I haven't done anything in my life that would be bad, as far as I can see. And when I took this test I was treated like a common criminal and I was embarrassed by the examiner with the numerous questions and some of the the intimations he made, and I really felt badly about it.

And he told me that -- I had found out later that I failed the test, and I couldn't understand how I'd failed the test when I wasn't telling any lies.

MAXA: Thank you very much, Jim.

Mark, is this going to work?

LYNCH: No.

MAXA: I don't think so, either. Clark Mollenhoff agreed. It's just another attempt of a frustrated President not controlling all the information.

LYNCH: One of the things that I think you have to understand here is that the vast majority of leaks come from very high levels.

MAXA: And are planned, maybe.

LYNCH: For very specific reasons. You know, really, the number of low-level people who go off and call news reporters on their own is a very small percentage of the whole thing. And most leaks are planned and are planned at a very high level for strategic bureaucratic or political reasons.

MAXA: Mark Lynch, I thank you for joining us this hour.

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